

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**8:00-00000**

**Chapter**

**#0.00    Hearings on this calendar will be conducted using ZoomGov video and audio.**

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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**CONT...**

**Chapter**

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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**CONT...**

**Chapter**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**8:14-14894 Randy L Stroops**

**Chapter 7**

Adv#: 8:21-01026 Stroops v. U S Department of Education

**#1.00 STATUS CONFERENCE RE: Complaint To Determine The Dischargeability Of  
Student Loan Debt As An Undue Hardship  
(cont. from 2-10-22 per alias summons issued on 2-02-22)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATION RE: DISCHARGE OF STUDENT LOAN DEBT ENTERED  
5-17-22**

**Tentative Ruling:**

Tentative for 12/9/21:  
Has this been resolved after default?

Appearance: required

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Tentative for 9/30/21:  
Dismiss for failure to prosecute.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Randy L Stroops	Pro Se
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**Defendant(s):**

U S Department of Education	Pro Se
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**Plaintiff(s):**

Randy L Stroops	Pro Se
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**Trustee(s):**

Karen S Naylor (TR)	Pro Se
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**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**8:14-14894 Randy L Stroops**

**Chapter 7**

Adv#: 8:21-01026 Stroops v. U S Department of Education

**#2.00 Plaintiff's Motion For Default Judgment  
(cont'd from 2-10-22)**

Docket 8

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATION RE DISCHARGE OF STUDENT LOAN ENTERED 5-17-22**

**Tentative Ruling:**

Tentative for 2/10/22:

Continue to June 2, 2022 to coincide with the status conference established under the new summons.

Appearance: required

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Tentative for 12/9/21:

This motion should likely be continued as it is unclear whether Debtor provided notice of the status conference to the U.S. Department of Education as directed at the hearing on September 30. The court requires an explanation from Debtor.

Appearance: required

<b>Party Information</b>
--------------------------

**Debtor(s):**

Randy L Stroops

Pro Se

**Defendant(s):**

U S Department of Education

Pro Se

**Plaintiff(s):**

Randy L Stroops

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**CONT... Randy L Stroops**

**Chapter 7**

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**8:21-10193 U.S. Titan Group Inc**

**Chapter 7**

Adv#: 8:22-01031 Naylor, solely in her capacity as the chapter 7 tr v. Tan, an individual

**#3.00 STATUS CONFERENCE RE: Complaint: (1) Turnover; and (2) Unjust Enrichment**

Docket 1

**Tentative Ruling:**

Tentative for 6/2/22:

Default entered? Court expects a motion for default judgment to be filed within 60 days. Status conference continued to August 4 @ 10:00AM as a holding date.

Appearance: optional

<b>Party Information</b>
--------------------------

**Debtor(s):**

U.S. Titan Group Inc

Represented By  
Jonathan J. Lo

**Defendant(s):**

Kelly Tan, an individual

Pro Se

**Plaintiff(s):**

Karen Sue Naylor, solely in her

Represented By  
Nathan F Smith

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nathan F Smith  
Arturo Cisneros

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**8:21-10193 U.S. Titan Group Inc**

**Chapter 7**

Adv#: 8:22-01032 Naylor, solely in her capacity as the chapter 7 tr v. Jinan Cunward Machinery

**#4.00 STATUS CONFERENCE RE: Complaint: (1) Turnover; and (2) Unjust  
Enrichment  
(another summons issued on 3-17-22)**

Docket 1

**Tentative Ruling:**

Tentative for 6/2/22:

Status conference continued to August 4 @ 10:00AM in order to effect proper service.

Appearance: optional

<b>Party Information</b>
--------------------------

**Debtor(s):**

U.S. Titan Group Inc

Represented By  
Jonathan J. Lo

**Defendant(s):**

Jinan Cunward Machinery Co., Ltd

Pro Se

**Plaintiff(s):**

Karen Sue Naylor, solely in her

Represented By  
Nathan F Smith

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nathan F Smith  
Arturo Cisneros



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**8:21-10193 U.S. Titan Group Inc**

**Chapter 7**

Adv#: 8:22-01033 Naylor, solely in her capacity as the chapter 7 tr v. Shinedong Corp, a

**#5.00 STATUS CONFERENCE RE: Complaint: (1) Turnover; and (2) Unjust  
Enrichment**

Docket 1

**Tentative Ruling:**

Tentative for 6/2/22:  
Status of service/default?

Appearance: optional

<b>Party Information</b>
--------------------------

**Debtor(s):**

U.S. Titan Group Inc

Represented By  
Jonathan J. Lo

**Defendant(s):**

Shinedong Corp, a California

Pro Se

**Plaintiff(s):**

Karen Sue Naylor, solely in her

Represented By  
Nathan F Smith

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nathan F Smith  
Arturo Cisneros

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

10:00 AM

**8:21-12001 Joseph L Sanders**

**Chapter 7**

Adv#: 8:22-01034 Watcher et al v. Sanders

**#6.00 STATUS CONFERENCE RE: Complaint for Nondischargeability of Debt Pursuant to 11 U.S.C. Section 523(A)(6) and Objection to Debtor's Discharge Pursuant to 11 U.S.C. Section 727 (a)(2)(B),(a)(3),(a)(4)(A), and (a)(4)(D)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 3-30-23 AT 10:00 A.M.  
PER AMENDED NOTICE OF CONTINUANCE OF STATUS  
CONFERENCE IN ADVERSARY PROCEEDING NO. 8:22-AP-01034 TA  
PENING RESOLUTION OF STATE COURT ACTION FILED 6-01-22**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Joseph L Sanders

Represented By  
Todd J Cleary

**Defendant(s):**

Joseph L. Sanders

Pro Se

**Plaintiff(s):**

Mabel Watcher

Represented By  
Rebecca M Wicks

John Watcher

Represented By  
Rebecca M Wicks

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nanette D Sanders  
Nathan F Smith

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**8:20-11795 Byron York Priestley**

**Chapter 7**

Adv#: 8:20-01159 Priestley v. 20 CAP FUND I, LLC et al

**#7.00** Motion For I. Partial Judgment On The Pleadings Regarding The Plaintiffs First, Second And Third Causes Of Action; II. Avoidance Of Post-Petition Transfer Under 11 USC 549; III. Turnover Pursuant To 11 USC 522 And 542

Docket 82

**Tentative Ruling:**

Tentative for 6/2/22:

This is plaintiff/debtor Byron York Priestley's ("Debtor" or "Plaintiff") Motion For: (1) Partial Judgment On The Pleadings Regarding The Plaintiffs First, Second And Third Causes Of Action; (2) Avoidance Of Post-Petition Transfer Under 11 U.S.C. sec. 549; (3) Turnover Pursuant To 11 USC 522 and 542. The motion is opposed by defendants/creditors 20 Cap Fund I, LLC; FCI Lender Services, Inc.; Lars E. Bell; Corey O'Brien (collectively "Defendants"). The motion does not seek a determination on damages, at least not at this time. The only issues to be resolved by this motion are as follows:

1. Determination as to whether 20 Cap Fund I, LLC's purchase of the Residence conducted on June 23, 2020 willfully violated the stay;
2. Whether injunctive relief requiring the Defendants to return the Residence to the Debtor is warranted;
3. Whether declaratory relief that the foreclosure sale of the Residence on June 23, 2020 was void as a matter of law is warranted;
4. In the alternative, whether turnover of the Residence pursuant to 11 U.S.C. sec. 522(h), 542 and 549 is warranted.

**1. Background**

Debtor filed his bankruptcy petition on June 22, 2020. The schedules included an interest in the Residence located at 22442 Rippling Brook, Lake Forest, CA 92630 (the "Residence" or the "Property") listed on Schedule A/B. The automatic stay arose on the petition date. Defendant 20 Cap Fund I,

**United States Bankruptcy Court  
Central District of California**

**Santa Ana**

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**CONT...**

**Byron York Priestley**

**Chapter 7**

LLC. ("20 Cap") is a limited liability company which held a pre-petition junior lien on the Residence. A foreclosure sale ("Trustee Sale") occurred on June 23, 2020 (Defendant says June 24, 2020?) and has not been rescinded. The Ryan Firm allegedly was informed that the Debtor had filed for bankruptcy. The Ryan Firm allegedly refused to accept that the bankruptcy invalidated the Trustee Sale. On June 24, 2020, 20 Cap received a Trustee's Deed Upon Sale from TD. On or after June 24, 2020, 20 Cap allegedly stated it would not reverse the Trustee Sale. 20 Cap is the current owner of the Residence is the record title owner having purchased the Residence by credit bid.

Defendants have twice previously tried to acquire Relief from the automatic stay and were denied. The automatic stay thus remains without alteration as of the petition date. No party has filed a Motion to Compel Abandonment and the Debtor's claimed interest ostensibly remains property of the estate. For reasons unknown, the Trustee Richard A. Marshack ("Trustee") has taken no steps to try and recover the property.

The First Amended Complaint ("FAC") was filed on November 20, 2021. The FAC contains three causes of action that are implicated in this motion:

1. Violation of the Automatic Stay by Defendants;
2. Declaratory Relief determining the Trustee Sale is void; and
3. Injunctive relief requiring turnover of the Residence or other appropriate relief.

Defendants answered the FAC on December 22, 2021. The pleadings were closed as of December 22, 2021. Discovery closes on June 30, 2022, pretrial motions must be heard before August 31, 2022 and a pre-trial conference is set for September 14, 2022.

A motion for judgment on the pleadings may be granted only if, taking all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). For purposes of a Rule 12(c) motion, the allegations of the non-moving party are accepted as true, and construed in the light most favorable to the

**United States Bankruptcy Court  
Central District of California**

Santa Ana

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**CONT...**

**Byron York Priestley**

**Chapter 7**

non-moving party, and the allegations of the moving party are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989); *Fleming v. Pickard* at 925.

**2. Did Defendants Violate The Automatic Stay?**

Plaintiff argues that the violation of the stay is obvious. The petition was filed on June 22, 2020 initiating the automatic stay; a Trustee sale was conducted on June 23, 2020 (or June 24, 2020?); Defendant 20 Cap, the party asserting ownership, issued a credit bid to purchase the Residence and was the beneficiary of the results of that sale (by definition, Plaintiff argues, this means that 20 Cap was the foreclosing lender); and finally, Plaintiff argues, 20 Cap remains in possession of the Property to the present. Defendants argue that they have always strenuously disputed Plaintiff's alleged ownership of the Residence. As such, Defendants argue, with such a fundamental fact in dispute, this motion should be denied. In fact, Defendants argue that although Plaintiff asserts that he took the Residence via quitclaim in June of 2017 from his step-father, Dennis McGaughey the original borrower("McGaughey"), Plaintiff allegedly admitted under oath in another case that, as of July 2018, he did not own the Residence or any real property. Plaintiff argues that the court should not be distracted by what Plaintiff may have said in another case and should focus on the undisputed fact that the quitclaim deed was notarized in 2017 and recorded in 2020 (1 day before the petition date and 2 days before the trustee's sale). Defendants assert that legal title to the Residence was kept intentionally ambiguous between Plaintiff and McGaughey for the years prior to the petition date as a sort of trap that has now been sprung as Defendants attempted to foreclose on the property. With title to the residence obscured, Defendants argue, there could be no willful violation of the stay.

Plaintiff, citing *Knupfer v. Lindblade (In Re Dyer)* 322 F. 3d 1178, 1191 (9th Cir. 2003), argues ("'[W]illful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional.")

But as the court reads the pleadings, Defendants deny receiving any notice of the foreclosure until after the fact, quite side from whether they

**United States Bankruptcy Court  
Central District of California**

Santa Ana

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**CONT...**

**Byron York Priestley**

**Chapter 7**

believed that debtor owned the residence such that the automatic stay was violated. In view of this denial the question of a willful violation cannot be decided in summary proceedings under Rule 12. But there may nevertheless be a violation of the automatic stay as intent or even knowledge is not an element. Under Ninth Circuit law, the foreclosure sale, as it occurred after the stay arose, is not just voidable but *void ab initio*. See e.g. *Schwartz v. United States (In Re Schwartz)*, 954 F. 2d 569, 573 (9th Cir. 1992) ("absent affirmative relief from the bankruptcy court, violations of the stay are void.").

**3. Injunctive Relief and Nunc Pro Tunc Relief by annulment**

Very little in the motion is devoted to the issue of injunctive relief, except to the extent that it will result in an order from this court to turn over the Residence. In other words, Plaintiff is requesting a mandatory injunction, but does not provide the legal framework. Instead, it seems, the court can take up the issue of whether the transfer is avoidable under 11 U.S.C. §§522 and 549. There is also the question of turnover under 11 U.S.C. §542 and/or §105(a). Defendants reveal that they are preparing a §362(d) motion for relief of stay seeking annulment back to date of the sale. An annulment or *nunc pro tunc* order is one of the ways the court might deal with a technical violation of the stay, depending where the equities lie.

**4. Can The Transfer Be Avoided?**

Plaintiff asserts that he has standing to request that the Residence be returned under 11 U.S.C. §§ 522 and 549. Plaintiff argues that he may exercise the powers of a Trustee under 11 U.S.C. Sec. 549 if the Debtor could have exempted such property, the transfer is avoidable and the Trustee does not attempt to avoid such transfer. 11 U.S.C. sec. 522(h). Plaintiff argues further that during a bankruptcy case a Trustee may avoid any transfer of estate property that has occurred post-petition pursuant to 11 U.S.C. sec. 549. Under that code section, Plaintiff asserts, the Trustee may avoid a transfer of property of the estate that occurs after the commencement of the case and is not authorized by code or order of the court. 11 U.S.C. sec. 549. Here, Plaintiff argues, the transfer of the Property occurred post-petition and was not authorized by the court. Plaintiff also points out that no party has filed a motion to compel abandonment, or a determination that Residence is not property of the estate. Plaintiff notes that Trustee has not taken any action to recover the property or avoid the transfer. Trustee did, however, file

**United States Bankruptcy Court  
Central District of California**

**Santa Ana**

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**CONT...**

**Byron York Priestley**

**Chapter 7**

an "Asset" report on February 3, 2021, and also filed a stipulation regarding granting of the Debtor's right to pursue damages for violation of the automatic stay, but has taken no further action. Thus, Debtor argues, Debtor is empowered to avoid the transfer as a preference.

Defendants point out that this alternative theory for avoiding the transfer does not appear in the FAC, and therefore, is not properly part of this motion. Plaintiff argues that the avoidance and turnover are separate from the judgment on the pleadings portion of the motion, and are properly before the court. Defendants also point out a renewed motion to annul the bankruptcy stay and validate the foreclosure sale is in prospect and will be on calendar not long after the hearing on this motion.

If the court is reading the opposition correctly, the Defendants do not directly challenge Plaintiff's ability to avoid the transfer under §549 and §522. What seems to be missing is at least some input from the Trustee. Why did Trustee feel it unnecessary to pursue an avoidance action such that the right to do so would pass to Plaintiff? Perhaps in light of the expected motion to annul the stay and validate the sale, the hearing on this motion should be continued because, if good cause is demonstrated to annul the stay and validate the sale, this entire motion is likely moot. Continuing the motion also allows for Trustee to provide some input and fill in some of the gaps here.

**5. Turnover**

As it seems nearly certain that a technical violation of the stay occurred, which voids the foreclosure sale (unless retroactive relief from stay or similar relief is obtained), the question then becomes what to do with the Property at this point. Plaintiff would obviously have this court issue an order for turnover. Plaintiff's assertion that this court can order 20 Cap to turn over the Property through §105(a) is only supported by scant authority. The more compelling argument for turnover would be under §542, which states in pertinent part: "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." Plaintiff argues that because the Property was

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**CONT... Byron York Priestley**

**Chapter 7**

indisputably his primary residence as of the petition date, he could have claimed an exemption under §522. Therefore, Plaintiff argues, the property should be turned over to Debtor pursuant to §542. Turnover classically refers to questions of possession, not title, and this court would not go through a pointless exercise if the stay is retroactively annulled and the sale validated.

**6. Where Does That Leave Us?**

To recap, it seems likely that Defendants violated the stay, which then voids the resulting sale as a matter of law even if inadvertent. Intent is not the issue. On this record, the court believes there is some undisputed information to so conclude but it is not entirely clear. But Defendants assert that a motion, which if granted, would potentially undo most or all of this motion, is going to be filed by the time this motion is up for hearing. Was it filed? When will it be heard? Plaintiff will likely be obliged to oppose that motion. Something nefarious is likely up here, but the court cannot determine exactly what it is on this record, and that goes to the question of whether *nunc pro tunc* annulment is in order. Remember, "cause" for relief of stay can include prepetition fraudulent behavior. See 11 U.S.C. sec. 362(d)(4). Consequently, turnover and some of the related questions must await that threshold decision.

*Continue to coincide with a renewed motion for relief of stay requesting annulment.*

Appearance: required

<b>Party Information</b>
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**Debtor(s):**

Byron York Priestley

Represented By  
Anerio V Altman

**Defendant(s):**

20 CAP FUND I, LLC

Represented By  
Andrew Mase  
Timothy M Ryan  
Michael W Stoltzman Jr



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**CONT...**      **Byron York Priestley**  
FCI Lender Services, Inc.

**Chapter 7**

Represented By  
Timothy M Ryan  
Michael W Stoltzman Jr

BANK OF AMERICA NATIONAL

Represented By  
Adam N Barasch

Bill Wolfson

Pro Se

NATIONSTAR MORTGAGE LLC

Pro Se

Corey O'Brien

Represented By  
Timothy M Ryan  
Michael W Stoltzman Jr

Lars E Bell

Represented By  
Timothy M Ryan  
Michael W Stoltzman Jr

**Plaintiff(s):**

Byron York Priestley

Represented By  
Anerio V Altman  
Douglas L Mahaffey

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Misty A Perry Isaacson

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**8:20-11795 Byron York Priestley**

**Chapter 7**

Adv#: 8:20-01159 Priestley v. 20 CAP FUND I, LLC et al

**#8.00** Defendants Motion For Sanctions Under Federal Rules Of Bankruptcy Procedure, Rule 9011  
**(cont'd from 5-05-22 per order granting mtn to cont. hrg on defendants' mtn for sanctions entered 4-20-22)**

Docket 73

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 7-28-22 AT 11:00 A.M.  
PER ORDER GRANTING SECOND MOTION TO CONTINUE THE  
HEARING ON DEFENDANTS' MOTION FOR SANCTIONS UNDER  
FRBP 9011 ENTERED 5-19-22.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Byron York Priestley

Represented By  
Anerio V Altman

**Defendant(s):**

20 CAP FUND I, LLC

Represented By  
Andrew Mase  
Timothy M Ryan  
Michael W Stoltzman Jr

FCI Lender Services, Inc.

Represented By  
Timothy M Ryan  
Michael W Stoltzman Jr

BANK OF AMERICA NATIONAL

Represented By  
Adam N Barasch

Bill Wolfson

Pro Se

NATIONSTAR MORTGAGE LLC

Pro Se

Corey O'Brien

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**CONT...**

**Byron York Priestley**

**Chapter 7**

Timothy M Ryan

Michael W Stoltzman Jr

Lars E Bell

Represented By

Timothy M Ryan

Michael W Stoltzman Jr

**Plaintiff(s):**

Byron York Priestley

Represented By

Anerio V Altman

**Trustee(s):**

Richard A Marshack (TR)

Represented By

Misty A Perry Isaacson

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**8:19-10526 LF Runoff 2, LLC**

**Chapter 7**

**#9.00** Trustee's Motion For Entry Of Order Pursuant to 11 U.S.C. Section 107(b), Rule 9018 Of The Federal Rules Of Bankruptcy Procedure; And Rule 5003-2(c) Of The Local Bankruptcy Rules Authorizing Trustee To File Under Seal Chapter 7 Trustee's Motion For Order; Authorizing Trustee To Use Property Of The Estate Pursuant to 11 U.S.C. Section 363  
**[Movant - Richard A. Marshack, Ch 7 Trustee Intends To Appear In Person]**  
**(cont'd from 4-26-22)**  
**(cont'd from 5-24-22)**

Docket 252

**Tentative Ruling:**

Tentative for 6/2/22:  
No tentative. Appearance: suggested

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Tentative for 4/26/22:  
Some better support on specifics for why a sealing is required (i.e. what is the harm threatened by on record filing?) would have been helpful, The court will, absent objection, review in camera the documents in question and the Trustee is expected to argue why there is a need for sealing after this review. Some of this may have to be on the record, at least preliminarily pending retrospective sealing, if indeed cause for that sealing is shown.

*No tentative.*

Appearance: required

<b>Party Information</b>
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**Debtor(s):**

LF Runoff 2, LLC

Represented By  
Marc C Forsythe

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, June 2, 2022**

**Hearing Room**

**5B**

11:00 AM

**CONT... LF Runoff 2, LLC**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
David Wood  
D Edward Hays